

REMARKS

This Amendment is intended to respond fully to the first Office Action dated October 3, 2003 in which claims 1-5 and 9-10 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,035,412 ("Tamer"); claims 11 and 14 were rejected under 35 U.S.C. §103(a) as being unpatentable over Tamer, of which the improper use of Official Notice to reject these claims is specifically traversed from the outset as being improper; claims 6-8 were rejected under 35 U.S.C. §103(a) as being unpatentable over Tamer in view of U.S. Patent Application Publication No. 2001/0016904 ("Hall"); claims 23-24 were rejected under 35 U.S.C. §103(a) as being unpatentable over Tamer in view of U.S. Patent Application Publication No. 2003/013278 ("Fujibayashi"); claims 12-13 and 25-27 were rejected under 35 U.S.C. §103(a) as being unpatentable over Tamer in view of U.S. Patent No. 6,366,987("Tzelnic"); and claims 15-22 and 26 were objected to as being dependent upon a rejected base claim. The examiner arguably noted that claims 28-32, although drafted in apparatus rather than method format, encompass the same scope of invention as claims 1-9, and consequently rejected these claims for the reasons stated with respect to claim 1-9.

The Examiner kindly indicated that claims 15-22 and 26 would be in allowable form if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Also, in this first Office Action, the numbering of claims 15-27 was objected to under 37 C.F.R. §1.126, and consequently the Examiner has re-numbered claims 15-27 as 14-26, respectively, for the purposes of this first, non-final Office Action. Further, claim 1 was objected to because of an informality.

In this Amendment, claims 1-9, 11-28 and 30 are hereby amended. These amendments include revisions to original claims 14-27 made in order to correct the mis-numbering error in the originally filed claims and to be consistent with the re-numbering scheme suggested by the Examiner. Claims 1-32 remain pending and are believed allowable for at least the reasons set forth below. As such, Applicant respectfully requests reconsideration of the aforementioned objections and rejections in view of these amendments and the following remarks.

A. Claim Rejections: Claims 1-14, 23-25 and 27

In the Office Action, independent claim 1 was rejected under 35 U.S.C. §102(b) as being anticipated by Tamer. Claims 2-14, 23-25 and 27 depend from claim 1 and are rejected in view

of Tamer or Tamer in combination with Fujibayashi, Hall or Tzelnic. As articulated in greater detail below, these rejections are respectfully traversed.

In general, claim 1 recites a method for transporting data stored on a volume of information between host computer systems within a distributed computer network. To accomplish this, the method recites creating a point-in-time copy of the volume and generating a backup components document. The backup components document includes information relating to a location for the point-in-time copy. The method of claim 1 specifically recites importing the backup components document to the host computer system that is to receive the point-in-time copy and “accessing the point-in-time copy using the location information in the backup components document.” Claim 1 is hereby amended to clarify the creation and use of the backup components document in context of the invention recited in this method.

Turning now to the primary reference, Tamer is directed to establishing duplicate copies of data in a first and a second set of storage volumes. After data is altered within either the first or second sets of storage volumes, a controller updates (or “synchronizes”) the set of storage volumes that was not altered with the data that has been altered in the other set of storage volumes. *See* Tamer, at Col. 7, lines 42-64. To accomplish this, Tamer teaches bit maps that record the track locations on which data was altered on both sets of volumes. *See* Tamer, at Col. 7, line 64 - Col. 8, line 12. To simplify the synchronization process, Tamer also teaches an ordered list that tracks all bit maps that have recorded an alteration of data since the previous synchronization of volume sets. *See* Tamer, at Col. 8, lines 34-42.

The examiner erroneously points to the ordered list as being the backup components document recited in claim 1. *See* Office Action, at page 3. The ordered list taught by Tamer is used by the controller to determine what data in the first set of volumes should be updated with a copy of altered data in the second set of volumes. *See* Tamer, at Col. 8, lines 42-51. In stark contrast, the backup components document recited in claim 1 is a document used for the purposes of accessing a previously created copy (i.e., “point-in-time copy”) of a volume of data.

Tamer does not teach or suggest in any manner creating a copy of a volume of data and then using the ordered list to identify a location for accessing the copied volume of data, as recited in claim 1. In fact, Tamer actually teaches away from the invention recited in claim 1 by teaching a system that is used to synchronize data between databases *after* the data has been altered in some manner. *See* Tamer, at Col. 7, lines 60-64. Tamer teaches the ordered list as a

means for communicating to the controller exactly what data has been altered, and therefore what data should *subsequently* be copied. As such, the ordered list necessarily cannot identify a location for accessing a copy of the data.

In sum, Tamer does not teach or suggest a backup components document, nor an act of accessing a copy of data based on such a document. For at least these reasons, claim 1 recites an invention that is allowable over Tamer and any possible combination of Tamer, Fujibayashi, Hall and/or Tzelnic. Claims 2-14, 23-25 and 27 each depend from claim 1, and hence, each recite an invention that incorporates at least the same limitations of claim 1. Thus, for at least the reasons noted above, claims 2-14, 23-25 and 27 are believed allowable over Tamer and any possible combination of Tamer, Fujibayashi, Hall and/or Tzelnic.

B. Claim Rejections: Claims 28-32

Claims 28-32 were rejected under Tamer for the same reasons as set forth for claims 1-9. *See* Office Action, page 10. However, the Office Action fails to specifically provide Applicant with a basis for these rejections as well as support thereof. Instead, the Office Action states, “the claims encompass the same scope of the invention as to that of claims 1-9, however, the claims are drafted as apparatus format rather than method formal, the claims are therefore rejected for the same reasons as being set forth above.” Such a broad, conclusory statement does not provide Applicant with a detailed basis and reasoning as to why these claims are rejected, and therefore these rejections are improper.

Nevertheless, independent claim 28, the base independent claim for this claims set, recites the creation of a point-in-time copy of a volume of data and mapping information that identifies a location for the created point-in-time copy. Indeed, like claim 1, claim 28 has been amended to more clearly define this mapping information in context of the present invention. This mapping information is information analogous to information recited in claim 1 as being included within the “backup components document.” As described in detail above, Tamer does not teach or suggest, and actually teaches away from, this form of information and the use thereof. Thus, claim 28 is believed allowable over Tamer and any possible combination of Tamer, Fujibayashi, Hall and/or Tzelnic.

Claims 29-32 each depend from claim 28, and hence, each recite an invention that incorporates at least the same limitations of claim 28. Thus, claims 29-32 are also believed allowable over Tamer and any possible combination of Tamer, Fujibayashi, Hall and/or Tzelnic.

C. Claim Objections: Claims 15-22 and 26

Claims 15-22 and 26 are hereby amended to clarify the subject matter of the invention recited therein. These claims have not been amended to distinguish over any prior art, or for that matter, for any reasons related to patentability of these claims under 35 U.S.C. §101, 102 or 103. Indeed, claims 15-22 and 26 are believed allowable because these claims depend from claim 1, and hence, recite an invention that incorporates at least the same limitations as claim 1. Even so, Applicant appreciates the Examiner's indication that original claims 15-22 and 26 recite allowable subject matter and respectfully requests reconsideration of these claims in light of the clarification amendments and the arguments in favor of patentability of claim 1.

CONCLUSION

This Amendment and the accompanying remarks is believed to be responsive to all points raised in the Office Action mailed October 3, 2003. Still, the Office Action may contain other arguments that are not directly addressed by this Amendment due to the fact that they are rendered moot in light of the preceding arguments in favor of patentability. Hence, failure of this Amendment to directly address an argument raised in the Office Action should not be taken as an indication that the Applicants believe the argument to have merit. Furthermore, the claims of the present application may include other elements, not discussed in this Amendment, that are not shown, taught, or otherwise suggested by the art of record. Accordingly, the preceding arguments in favor of patentability are advanced without prejudice to other bases of patentability.

Claims 1-32 are pending in the application and are believed to clearly be allowable over the art of record. Accordingly, prompt allowance and passage of the application to issue are earnestly solicited. Should the Examiner have any remaining questions or concerns, he/she is encouraged to contact the undersigned attorney by telephone to expeditiously resolve such concerns. A check covering the addition of one independent claim is submitted with this Amendment. Please charge any additional fee to Deposit Account No. 13-2725. Also, please credit any overpayment to Deposit Account No. 13-2725.

Respectfully submitted,



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